

## MEDIATE THIS!

## WHEN STAR EMPLOYEES LEAVE AND CLIENTS FOLLOW THEM

BY STEVEN P. DINKIN

*The National Conflict Resolution Center handles many business disputes involving contractual disagreements. We explore this category today with an example of a high-performing sales representative who has accepted a job at another firm. Two of her longtime clients have signaled their intention to follow her. Her hiring contract included a clause that she could never compete with her employer. The firm wants to enforce it by filing a civil suit for damages.*

In days of old, if someone stole your beloved, you could sue the interloper under “alienation of affection” statutes. The legal reasoning was that a close personal relationship has tangible value, and a person who robs you of it must compensate you.

Such laws have disappeared from the books in 43 states, including California. The notion that you can impose penalties on a change of heart is now considered hopelessly out of touch.

Today, in the world of commerce, employers in service industries often insist that new hires sign “non-compete” and “non-solicit” agreements. They want to ensure that if an employ-

ee decides to leave, she cannot steal clients on the way out.

As the National Law Review explained in a November 26, 2018 article on this issue, California courts essentially treat these covenants as alienation-of-business-affection ploys. The article states, “California Business & Professions Code section 16600 makes clear that any non-compete provision between an employer and an employee ... will not be enforceable under California law.”

Departing employees cannot take actual property, including client contact information, electronic records and other company data. But if a popular sales rep politely informs her accounts she has accepted another job offer, they are free to follow her, and no one can be punished when that decision is made.

Employers naturally feel jilted when this happens. When you invest a lot in mentoring employees and cultivating customers, and then they run off together, what is the appropriate response?

In the “lessons learned” category, a wise company will conduct gracious exit interviews with anyone who leaves — staff, customers, vendors, affiliates. Such conversations could help identify underlying problems that must



GETTY IMAGES

**This week’s column looks at the relationship of departing employees and the business loyalties of their clients.**

be addressed.

In the conflict-resolution category that is this column’s purview, we always counsel that a strategic long-view response to a setback will be far more productive than a rash short-view reaction.

The long view delivers two advantages. First, it gives you the space to learn how to manage adverse circumstances so they don’t manage you.

Second, it allows time for surprising opportunities to sur-

face. People become mired in conflict by the erroneous belief that misfortune is a permanent state. That is never true.

Employees and clients who decamp from one firm to another must navigate a learning curve. Adjusting to a new organizational culture and a new set of players is never easy. If early turbulence is rough enough, they may regret the switch.

Staying on good terms with former associates leaves the door

open to resuming those business relationships and recalibrating them to put future collaboration on a stronger footing.

And because every industry is an ecosystem where inhabitants both compete and cooperate (at professional conferences and on large-scale projects), you want to maintain the image of a confident player who always travels the high road.

A final and powerful incentive to refrain from seeking retribution is the morale of the employees and clients who are still with you.

Everyone will feel unsettled by high-profile departures, and they will look to management for direction and reassurance. Instead of wasting energy on litigating the past, smart leaders will forge ahead with a new plan for retaining current employees and clients, recruiting new ones and improving company performance.

Steven P. Dinkin is a professional mediator who has served as president of the San Diego-based National Conflict Resolution Center since 2003. Do you have a conflict that needs a resolution? Please share your story with The Mediator via email at [mediatethis@ncrconline.com](mailto:mediatethis@ncrconline.com) or as an online submission by visiting [www.ncrconline.com/MediateThis](http://www.ncrconline.com/MediateThis). All submissions will be kept anonymous.

## NOTEBOOKS

From Union-Tribune reporting staff

## OUTDOORS: ERNIE COWAN

## Calming effects of fire, flowing water

I’ve come to believe that campfires and flowing streams accomplish the same thing.

It’s impossible to sit by a warm campfire or a babbling mountain stream and not slip into a mindless, peaceful state.

The noise of the crackling fire and sound of flowing water are a soothing symphony, and I can’t help but believe that the rising campfire smoke and moving waters carry away your stress, cares and woes.

Native American cultures recognize fire as something spiritual that you cannot touch, but yet it warms you and provides light. Smoke from their fires carry their prayers to the Creator.

How many times have I been warmed by a campfire and at the same time energized as stress seems to flow away with the rising smoke?

This similarity between fire and moving water dawned on me recently when I made my annual spring visit to the Eastern Sierra.

I’ve been doing this for 35 years. Sometimes it’s to fish, other times it’s to take pictures, and sometimes both. But it’s always a time of renewal when I spend several days listening, looking and learning about nature and myself.

On this trip the arrival of spring has brought a healthy stream flow because of the record winter snowpack.

As I spent a few hours in the forest wandering along Lee Vining Creek I sat for a time to watch the spring woods coming to life after being buried under many feet of snow.

Campgrounds were still closed, but the transition from winter to spring was obvious. Steller’s jays loudly announced my presence, and American robins seemed to ignore the warning as they bounced about on the forest floor feeding, sometimes within just a few feet.

In the crisp, early morning sunlight, the leafless aspens appeared to be covered in frost, but it was actually the glow of delicate catkins in the backlight. The catkins are a promise that leaves will soon follow, changing the sound of the wind from a sharp tone to a softer whisper.

The nearby creek was gurgling and rushing and after a few minutes I realized I was reacting in the same way I do when sitting in front of a campfire.

Someone once said that a man never steps in the same stream twice. I pondered that and understood as I studied the constantly changing shape, color, and sound of the moving water.

Soon I realized there was nothing else on



ERNIE COWAN

**The sound of moving water can be mesmerizing and relaxing.**

my mind. No stress, no worries, relaxed, even mesmerized.

With our busy lives it’s difficult to spend time often by a peaceful campfire or flowing stream. But seeking the wild places as much as you can is a worthy goal.

Even a garden fountain can add a peaceful sound that will let your mind calm and your stress levels subside.

## Wren nest update

There is life in the tiny white wren nesting box here on Mt. Whoville.

As I reported last week, the parent birds built a nest this year that has obscured the tiny camera mounted inside of the nest box. We were not able to see how many eggs were laid, but the now constant activity and noise confirms that chicks have hatched. Last year we had seven chicks hatch on May 4 and 5.

Nesting began a little sooner this year and we knew there were eggs, but the poor visibility did not allow us to accurately know when they were deposited.

Our best guess now is we have at least four little hungry house wren chicks.

Both adult birds are busily shuttling back and forth, bringing insects, grubs and spiders for the chicks to enjoy.

I get an occasional glimpse of beaks, open mouths or developing feathers to let me know that the chicks are maturing. It’s easy to tell when a parent arrives with food because the nest box erupts in high-pitched chirps and the tiny birds compete to be fed.

I am hoping that as the chicks get bigger, they will push some of the nest twigs aside, giving us a good view of these new additions.

Email [ernie@packtrain.com](mailto:ernie@packtrain.com) or visit [erniesoutdoors.blogspot.com](http://erniesoutdoors.blogspot.com).

## THE READERS’ REPRESENTATIVE: ADRIAN VORE

## Naming suspects in mass shootings

The news and editorial departments operate independently at the Union-Tribune, as they traditionally do at established, mainstream newspapers.

Confusion over this separation apparently occurred with some readers after the recent Poway synagogue attack.

The feedback also brought up the question of should a news report name the suspect of a mass shooting.

On April 20, the editorial page published an editorial based on the 20th anniversary of Columbine. The U-T opinion piece noted other mass shootings — with the killers’ names redacted. “Today we focus on the shooters and commit to a new way of reporting on their terrible deeds,” the editorial read. “Our (editorial) board will no longer publish these perpetrators’ names in our editorials except in rare circumstances when we deem the news value too great to avoid doing it once.”

One week later the deadly shooting happened at Chabad of Poway. The suspect’s name appeared in news reports.

“Didn’t I just read a U-T editorial about how the paper would no longer give these maniacs the publicity they so desperately crave?” a reader wrote in the online comments of a story on the attack. “That it would no longer print their names. ... THAT policy didn’t last long!”

Another commenter referenced the editorial’s mention of publishing a name once, when the news value dictates. “OK, the SDUT has published this murderer’s name once. Let’s hope they don’t publish again.”

A reader who emailed the U-T also referenced the April 20 editorial, and a news article on the coverage of the Poway attack. “While I have no doubt that the article is factual, it felt kind of soft on someone who committed such a heinous crime. I heard no outrage in the reporting at all. And his name was mentioned at least eight times throughout. Your newspaper has now given him recognition and a degree of fame.”

The decision by the editorial board and Matthew T. Hall, the editorial and opinion director, does not affect news stories. Editorial and news are separate.

I believe it is absolutely essential that news reports on the Poway synagogue attack name the suspect. And an editorial stance of not naming mass shooters has no place in news coverage, which must provide readers — and history — with a full, straight-ahead report.

U-T Editor and Publisher Jeff Light, a member of the editorial board, responded to the reader who emailed. “Effacing the names of evil-doers from our philosophical discussion of our values, policies and aspirations is, to me, an expression of our principles. It says that these people, and whatever motivates them, should be disdained, marginalized and ultimately erased from the public consciousness.”

“In our coverage of real-time news, however, we are accountable to a different standard: an honest account of actual events, true facts and real people. In our news coverage, we serve no agenda other than a search for the truth. In this case, that includes details about the perpetrator — who he was, how he came to this point, what warning signs might have been missed, and what evil influences might have led him to this point. These crimes are carried out by real people in our midst. That is not reporting that I believe should be overlooked.”

After hearing from readers who referenced the April 20 editorial and then wondered why the U-T published the Poway suspect’s name in news reports, I asked Hall for his thoughts:

“The San Diego Union-Tribune Editorial Board’s decision not to publish mass shooters’ names in our editorials except in rare circumstances amounts to a refusal to give them the notoriety many so clearly crave.”

“It is an expression of the board’s values, and, in our opinion, takes a strong position, one that other news outlets may or may not emulate. I’m sure some journalists ... consider it a bridge too far to refuse to print such a crucial detail as a person’s name. But we stand firmly by our new policy, as those who read Monday’s editorial (on the Poway attack) saw.

“Given journalism’s pursuit of the truth ... our decision was neither easy nor simple, but we felt compelled to take the unusual stand at this time.

“The editorial board and I, as team leader, control only the Union-Tribune’s opinion section, and we have no say or influence over news coverage. That is as it should be. We don’t make decisions with the newsroom in mind. Anything else would be inappropriate.”

Readers, what do you think? Should names of hate-crime shooters be eliminated from news coverage? Write to: [readers.rep@sduniontribune.com](mailto:readers.rep@sduniontribune.com).

## FROM THE ARCHIVES

## CINCO DE MAYO HAS HISTORY IN SAN DIEGO

Mexicans and San Diegans of Mexican descent have long celebrated Cinco de Mayo, a commemoration that marks the anniversary of the capture of Puebla in 1862 by a young Porfirio Diaz, and the final defeat of French forces in Mexico.

In 1882, The San Diego Union recorded a Cinco de Mayo celebration north of the border on the 20th anniversary of the historic battle.

In 1937, a daylong Cinco de Mayo fiesta was held in Old Town on the 75th anniversary of the historic victory — beginning a tradition that still continues to this day.

Advance notice of the 1882 event ran in the paper in both English and Spanish.

*From The San Diego Union, Thursday, April 27, 1882:*

Every arrangement is being made by Col. Ferrer for a fitting celebration of the heroic defense of Puebla, the “Cinco de Mayo.” The exercises will take place at Rosario hall (northeast corner of F. and India streets) on the second of May.

## CELEBRATION OF MEXICAN INDEPENDENCE.

EDITOR UNION: All the pioneers of this county understand that we have celebrated annually on the 5th day of May, the same being the twentieth anniversary of the heroic defense of the Republic of Mexico, when, with the aid of the Great Republic of the United States, the Mexicans drove a foreign despot from its shores. This year we will celebrate that anniversary on the 2d day of May, on account of the celebration of the City Guard of this city occurring on the 5th.

All friends of the Sister Republics are respectfully invited to attended at Rosario Hall, on May 2d, 1882. Speeches will be made reviewing all the important events of the history of the country, and especially of the present status of the commercial relations between here and Lower California. Guns will be fired in the morning, at noon, and at the opening of the ball in the evening. Subscription list at Rosario Hall.

COL. MANUEL A. FERRER Orator.

MAYO 2 --1862-1882 --Gran Celebracion del glorioso dia 5 de Mayo --20 aniversario de las heroica defensa de Puebla, por el progreso. Gran Baile en el Rosario Hall, Mayo 2.

CORL. M.A. Y FERRER Orator.

*From The San Diego Union Editorial page, Wednesday, May 5, 1937:*



*TODAY the North San Diego chamber of commerce invites everyone who can attend to assist in observing at Old Town a major anniversary of Mexican history.*

Seventy-five years ago today Mexico broke up an attempt to found a Napoleonic empire on American soil. Because most of

the histories read by Americans of the north have European roots we hear little of the American side of the attempt. A great deal of the sympathy has been wasted upon the royal adventurer who was deluded into believing that a throne could be set up in the New World. Actually the Mexicans who, three-quarters of a century ago, broke up the attempted invasion fought the battle of the New World against the Old.

It is fitting and right, therefore, that the Cinco de Mayo should be observed at the point where Mexico first established a foothold on this side of what later became the international border. Old Town provides a perfect setting for such a festival which, if it is fittingly perpetuated as an annual affair will emphasize San Diego’s traditional kinship with Old Mexico.

Because we on this side of the international border have our own distinct political institutions and traditions we have only a remote although friendly interest in our neighbors’ history and aspirations. But we can join whole-heartedly in withing Mexico well in her effort to maintain and extend her independence of domination by Old World powers and Old World movements designed not to aid Mexico but to re-establish the domination Europe once built up in Mexico on the blood-stained ruins of a native American culture.

HISTORICAL PHOTOS AND ARTICLES FROM THE SAN DIEGO UNION-TRIBUNE ARCHIVES ARE COMPILED BY MERRIE MONTEAGUDO. SEARCH THE U-T HISTORIC ARCHIVES AT [NEWSLIBRARY.COM/SITES/SDUB](http://NEWSLIBRARY.COM/SITES/SDUB).